IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.4709 of 2006

Shri Jauarkha Sandukha Pathan & ors. Petitioners
Vs.
Rukasana Sandukha Pathan Respondent

Mr.A.N.Mulla for petitioners.
Mr.Suresh Sabrad for respondent.

CORAM: B.H.MARLAPALLE,J.

August 01, 2006.

P.C.

. Heard Mr.Mulla, the learned counsel for the petitioners and Mr.Sabrad, the learned counsel for the respondent. Rule. Respondent waives service.

By consent Rule is made returnable forthwith.

. The petitioners-defendants are aggrieved by the order passed by the learned Ad-hoc Addl. District Judge, Niphad on 22/6/2006 thereby allowing Misc. Civil Appeal No.16 of 2006. The lower Appellate Court was pleased to set aside the order passed by the trial Court on 13/2/2006 rejecting the application at Exhibit 5 for temporary injunction in RCS No.150 of 2005 filed by the present respondent - Mrs.Rukasana Pathan.

. Though the trial Court recorded that there

was, prima facie, no evidence regarding the possession of the plaintiff over the suit property when the suit was filed, the lower Appellate Court did not agree with the said finding and proceeded on the principle of equity. The lower Appellate Court noted that the appellant i.e. the respondent is a destitute lady having no shelter as she was divorced in the year 1986. This observation of the lower Appellate Court is in fact contrary to the statement made by the plaintiff herself in her application at Exhibit 5 wherein she admitted that she was remarried on 21/10/2004 with the husband of her deceased sister. The learned counsel for the petitioners has also brought on record a copy of the registered sale deed signed on 22/9/2005 which shows that the plaintiff has purchased a separate house at Niphad itself for a consideration of Rs. 2,50,000/-. This document was admittedly not before the lower Appellate Court. As per the learned counsel for the petitioners-defendants, the plaintiff is staying at Niphad but not in the suit house after her second marriage and, therefore, she could not get the order of temporary injunction.

. This petition, therefore, succeeds partly and

the same is hereby allowed. The impugned order dated 22/6/2006 is hereby quashed and set aside and Misc. Civil Appeal No.16 of 2006 is hereby restored to the file of the lower appellate Court. The defendants shall place on record a copy of the registered sale deed dated 22/9/2005 with an application before the lower Appellate Court within a period of two weeks from today and Misc. Civil Appeal No.16 of 2006 shall be re-heard and decided on its own merits afresh. The appeal to be finally disposed off within a period of three months from today. Rule made absolute accordingly.

(B.H.MARLAPALLE,J.)